



D8

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: EAC-00-049-53110

Office: Vermont Service Center

Date:

MAR 7 2001

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:



Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Unit

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a tennis school. The beneficiary is a tennis player. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in athletics, in order to employ him in the United States for a period of three years.

The director denied the petition finding that the petitioner failed to establish that the beneficiary qualifies for classification as an alien with extraordinary ability in athletics within the meaning of the regulatory provisions. The director noted that the beneficiary competed at the "satellite" level of play and not at the "grand slam" level of play.

On appeal, counsel for the petitioner argued, in pertinent part, that the beneficiary has achieved national acclaim as a tennis player in his native country and that his standing in the satellite tournaments demonstrates that he is at the very top of his field. Additional documentation was submitted.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien of extraordinary ability in athletics.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim

and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's

occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is a native and citizen of India currently residing in the United States as an F-1 student. Documentation was submitted showing that the beneficiary had achieved a level of recognition as a youth and university level tennis player in India. A letter was also submitted from the United States Tennis Association ("USTA"), Eastern Section, stating that the beneficiary is a top ranked player.

On appeal, counsel submitted certification that the beneficiary is a member of the United States Professional Tennis Registry and submitted additional certificates of his play in various tournaments in India.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

For example, documentation was submitted showing that the beneficiary played in and won many tennis competitions in India. But there is no evidence showing the system of ranking in tennis in India and the beneficiary's standing in that ranking. In addition, while the letter from the USTA Eastern Section opined that the beneficiary is a "top" player, there was no explanation of how that determination was reached. The petitioner did not submit a consultation from the national office of the USTA, or other peer review organization, demonstrating that organization's representation of the sport and the beneficiary's standing in the sport.

The petitioner submitted no documentation that the beneficiary is internationally ranked by any of the major tennis organizations. Nor is there any evidence of his recent competition. The petitioner also failed to submit any review of the petitioner's

standing from a major publication in the field. There is also no evidence that the beneficiary has commanded a high salary or prize money in the sport. The proffered annual salary of \$30,000 is not the level of remuneration contemplated in the regulations.

In addition, the petitioner failed to submit documentation verifying the recognized levels of play in tennis. There is no documentation explaining the term "satellite," showing the type of competition involved in that level of play, or demonstrating the recognition accorded that level of play.

The record contains no documentation supporting counsel's assertion that "satellite" level tennis is a distinct field of endeavor in athletics. Many sports have a series of leagues or levels of competition. However, counsel's argument that a top ranked player in a minor league level of competition qualifies for O-1 classification as being at the "very top of the field of endeavor" is not persuasive.

Pursuant to the regulations, O-1 classification is available to a "small percentage" of athletes who have arisen to the "very top" of the field of endeavor. The petitioner has not established that the beneficiary's abilities have been so recognized. Therefore, it must be concluded that the petitioner has not shown that the beneficiary is an athlete of extraordinary ability within the meaning of section 101(a)(15)(O) of the Act.

There is an additional issue of whether the proffered position meets the criteria for O-1 classification. The O-1 classification is available to qualified aliens who seek to come to the United States to perform services relating to a specific event or events. 8 C.F.R. 214.2(o)(1)(i). The petitioner stated that the duties of the proffered position would be teaching children's tennis at the tennis school and competing in unspecified competitions.

In this case, it is concluded that teaching youth tennis is not related to a specific athletic event or events and does not constitute continuing in the work of athletic performance at the extraordinary level. Nor does a general statement that the beneficiary will compete in unspecified competitions establish that the beneficiary seeks admission to continue in athletic performance at the level of extraordinary ability. Therefore, it must be concluded that the proffered position has not been shown to constitute continuing work requiring extraordinary ability in athletics within the meaning of the Act.

In addition, the petitioner did not submit a labor consultation addressing the nature of the work to be performed in the United States as required. For these reasons as well, the petition may not be approved.

The denial of this petition is without prejudice to the beneficiary pursuing any other immigration benefit for which he may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.